



U.S. Department
of Transportation
**Federal Aviation
Administration**

Great Lakes Region
Illinois, Indiana, Michigan,
Minnesota, North Dakota,
Ohio, South Dakota,
Wisconsin

2300 East Devon Avenue
Des Plaines, Illinois 60018

POLICY AND PROCEDURES MEMORANDUM - AIRPORTS DIVISION

NUMBER : 5100.2B

DATE : October 1, 1992

SUBJECT : Submission of Title Evidence or Title
Certification, and Content and Review of Title
Evidence.

REFERENCE : Order 5100.38A, Airport Improvement Program
(AIP) Handbook, Paragraph 613

CANCELLATION : PPM 5100.2A dated July 28, 1986

APPENDIX : 1. Content and Support Documentation for
Title Opinions
2. List of Changes from PPM 5100.2A dated July
28, 1986
3. Resolution of Comments (Internal Use Only)

1. Background. Order 5100.38A establishes requirements for submission and review of title evidence, making the need for any submission to Regional Counsel discretionary on the part of the Airports Division Manager. It also speaks to the use of certification in lieu of title evidence. PPM 5100.1D establishes a means of accepting Sponsor certification as to land interests. In those instances where such certification is not acceptable, the following policy will apply.

2. Policy/Procedures.

a. Title evidence will not be routinely submitted to AGL-7 for advice/assistance. The ADO Manager will identify and determine that there are no encumbrances which will prevent the use of the land for the purpose(s) acquired, and that title is sufficient to prevent any adverse effect upon accomplishment of the project and/or operation and maintenance of the airport. The ADO is encouraged to consult with the technical expert in AGL-620 prior to requesting AGL-7 advisory services.

b. When the ADO Manager determines it necessary to seek additional guidance and/or counsel from AGL-7, an information copy of the ADO transmittal memo shall be sent to AGL-620.

Distribution:

AGL-600/601/610/620; AGL-602
CHI ADO; DET ADO; MSP ADO; BIS AFO
State Aviation Directors (for information by ADO's)

Originator: AGL-620

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c. When land acquisition is included in the project work scope, a title opinion may be required by the ADO's; but appropriate certification, per Order 5100,38A, shall normally be obtained. If the land in which participation is requested is required for project work scope construction, the ADO must be satisfied as to the adequacy of the sponsor's property interest prior to the commencement of any construction thereon. Where the sponsor has already acquired the land and is seeking reimbursement for the Federal share of the acquisition costs, the above procedure(s) shall apply.

d. When the sponsor is required by a Special Condition or a covenant in the Grant Agreement to acquire additional land or property interests (usually in the runway protection zone area without Federal participation under the project), the same procedure(s) in paragraph 2.C. shall apply.

e. The land covered by a Title Opinion should be inspected by and certified to by the sponsor's attorney that there are no unrecorded easements, persons claiming adverse possession, or any other interests that would affect the quality of the Title that are not covered by the Opinion.

f. If the ADO determines that AGL-7 advice is required regarding a title opinion, all pertinent data shall be submitted, under cover of a forwarding memo, to facilitate legal assistance/advice. (An information copy of the memo only shall be sent to AGL-620) For instance, counsel will want to know:

(1) Why is the matter being submitted to AGL-7?

(2) What is the sponsor's obligation to acquire the land, i.e., as a Federal participation feature, for satisfaction of a Special Condition, etc.?

(3) What type of property interest must the Sponsor acquire to satisfy its obligation?

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(4) Does the title opinion show that it relates to the land the sponsor is obligated to acquire? What records were examined and what was the period of search? Is the "through" date reasonably current? Does it reflect ownership by the sponsor of the property interests the sponsor is obligated to acquire? Does it express the type of property interest acquired by the sponsor (or owned by Grantors of easements acquired by the sponsor in terms of "fee simple title free and clear...subject only to the following exceptions...")? Does it describe in sufficient detail any exceptions other than those set forth? Does it describe in sufficient detail any exceptions so that the effect upon the airport can be ascertained or, if not, are copies of the instruments evidencing such exceptions furnished?

(5) Does the ADO consider the property interests the sponsor has acquired not adequate for their intended purposes, assuming the title evidence is satisfactory? Note: Specific reasons for considering the property interests inadequate, inclusive of the sponsors case for adequacy, should be provided. Generally, only when the ADO differs with the sponsor should AGL-7 advice be sought.

(6) Has the ADO determined that the various exceptions to the sponsor's title not constitute an undue risk of interference with the operation or development of the airport?

(7) Does (do) the legal description(s) employed in the opinion conform to the corresponding delineation on the Exhibit "A" property map? If the attorney does not tie in his/her description with the corresponding designation used on the Exhibit "A", identification should be made by the ADO in the margin. The ADO should explain and identify when, because of ownership and acquisition unit considerations, the attorney has to describe an area which lies within or encompasses more land than a particular parcel or tract as designated on the Exhibit "A". AGL-7 will return all data submitted by the ADO with any legal advice.


W. Robert Billingsley
Manager, Airports Division

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Appendix 1

APPENDIX 1. CONTENT AND SUPPORT DOCUMENTATION FOR TITLE OPINIONS

A. The title opinion should contain the following essential elements:

1. The basis for the title opinion. The sponsor's attorney should indicate whether the title opinion is based upon a personal search of the land records, and/or an abstract thereof, or upon a title insurance policy issued by a licensed title company. If, based upon a title insurance policy, a copy of said policy should be made an attachment to the title opinion. The title opinion should speak to any exceptions noted in the policy. If the acquisition was by condemnation, a copy of the initiating pleading and the judgement or award should accompany the opinion.

If under State law, title vests following judgment and award order, upon deposit with the clerk of the court of the amount of the award, the fact thereof should be evidenced or spoken to. If the amount of the award was appealed, a copy of the order entered thereon should be furnished.

2. A legal description of the land covered by the opinion and identification thereof by parcel, tract or area number, as shown on the Exhibit "A" property map attached to the project application. The legal description should agree with the Exhibit "A". Any discrepancies should be fully explained by the examining sponsor's attorney.

3. The quantum of title or other interest held by the sponsor must be specified, i.e., fee simple, easement, lease, etc. In order to indicate that a sponsor holds the entire property interest subject to no (or only minor) encumbrances, the title opinion must use the term "fee simple"; the use of a term such as "good and merchantable title" is not, standing alone, acceptable.

4. All defects in title or outstanding encumbrances such as leases, easements, mortgages, liens, mineral rights, etc., must be set forth by the sponsor's attorney and explained in the opinion in order to permit a determination by the ADO as to whether these defects or encumbrances will interfere with the accomplishment of the project or the use and operation of the airport. A statement by the sponsor's attorney to the effect that there are no outstanding exceptions to title that will interfere with the accomplishment of the project or the use and operation of the airport is NOT acceptable. If there are no outstanding exceptions, it should be so stated in the opinion.

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Where there are outstanding easements and/or other exceptions to the title, the ADO should indicate their possible effect on the project or the use and operation of the airport. This is particularly true of easements for pole lines and other above-ground utilities or structures which might violate the height restrictions in FAR, Part 77, or for pipelines (encased or not encased), the repair, maintenance or augmentation of which could result in disruption of use of a runway or other essential airport facility. The likelihood of explorative or production development under an outstanding oil, gas or mineral lease or separated mineral fee, should be spoken to. Subservient drainage, in formalized recorded form, should be examined carefully from an engineering standpoint and the possible need for any consideration to be given to it in engineering planning.

B. The title opinion should be supported by the following documents:

1. Where the sponsor acquires an easement, the opinion must contain a statement "as to the nature and quality of the interest held by the grantor(s) in the property affected by the easement, that the grantor(s) has(have) the right to convey the interest, purported to be conveyed, and that the grantor(s) is(are) the sole owner/s." Any encumbrances to the title should be listed and explained in order that a determination can be made by the FAA as to whether they will interfere with or abridge the rights granted under the easement. Any mortgagee of the fee should either execute a partial release or partial relinquishment, or join the execution of the easement grant insofar as its interest appears, or a subordination agreement (which, is recordable, should preferably be recorded).

2. Where the sponsor acquires a long-term lease from another public agency for the development of all or part of the airport, one copy of the lease should be attached to the title opinion. The quantum to title held by the other public agency and any exceptions to or encumbrances against the title should be set forth and explained in the title opinion.

3. In all cases in which the title opinion is based upon a review of a title insurance policy by the sponsor's attorney, one copy of the policy should be included as an attachment to the title opinion.

4. When donated land is involved, the title opinion should include one copy of the recorded deed.

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Appendix 2

APPENDIX 2. - LIST OF CHANGES FROM PPM 5100.2A DATED JULY 28, 1986

1. AGL-7 will be contacted by memo only in non-routine, unusual circumstances. An information copy of the transmittal memo to AGL-7 will be forwarded to AGL-620. The ADO's are encouraged to consult the technical experts in AGL-620 prior to requesting AGL-7 services.
2. Sub-paragraph 2.b. has been changed from airport title opinion prior to issuance of a first time grant in PPM 5100.2A to sending AGL-620 an information copy of the AGL-7 transmittal memo.
3. The same ADO review procedures will be used when land acquisition or land reimbursement is included in the grant description or is not in the grant description but required by a grant special conditions (see paragraphs 2.c. and 2.d.).
4. In seeking AGL-7 advice, the ADO will document why they think the sponsor does not have adequate land interests (paragraph 2.f.(5)).
5. AGL-7 will not necessarily assume the ADO has inspected the property in question.
6. General editorial update to clarify roles in the review and coordination process.
7. The sub-paragraph regarding "Title evidence is not required" (para. 2.g.) has been eliminated.